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FIRST NAMED INVENTOR ATTORNEY DOCKET NO. CONFIRMATION NO. APPLICATION NO. FILING DATE 2002U020.US 6068 10/716,291 11/18/2003 Kevin J. Cann **EXAMINER** 7590 03/28/2005 Univation Technologies, LLC BROWN, JENNINE M Suite 1950 PAPER NUMBER ART UNIT 5555 San Felipe Houston, TX 77056 1755

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

		Applicati	on No.	Applicant(s)
Office Action Comments		10/716,2	91	CANN ET AL.
	Office Action Summary	Examine	r	Art Unit
		Jennine N		1755
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).				
Status				
1)🖂	Responsive to communication(s) filed on <u>14 March 2005</u> .			
2a)□	This action is FINAL . 2b)⊠ This action is non-final.			
3)	☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is			
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.				
Disposition of Claims				
4)🖂	☑ Claim(s) <u>1-56</u> is/are pending in the application.			
•	4a) Of the above claim(s) <u>14-56</u> is/are withdrawn from consideration.			
5)	5) Claim(s) is/are allowed.			
· <u> </u>	☑ Claim(s) <u>1-13</u> is/are rejected.			
	·_ ·			
8) Claim(s) are subject to restriction and/or election requirement.				
Application Papers				
9) The specification is objected to by the Examiner.				
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.				
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).				
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).				
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.				
Priority under 35 U.S.C. § 119				
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No				
3. Copies of the certified copies of the priority documents have been received in this National Stage				
application from the International Bureau (PCT Rule 17.2(a)).				
* See the attached detailed Office action for a list of the certified copies not received.				
Attachment(s) 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)				
2) Notice	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (P	TO-948)	4) Interview Summary (Paper No(s)/Mail Date	e
3) 🛛 Inform	ation Disclosure Statement(s) (PTO-1449 or No(s)/Mail Date 7/16/04;2/23/04.		5) Notice of Informal Pa 6) Other:	atent Application (PTO-152)

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Election/Restrictions

Applicants have elected claims 1-13, therefore claims 14-56 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/14/05.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "about" in claims 1 and 7 are relative terms which render these claims indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear whether "about" includes +/- 100 degrees C, 20 degrees C or 1 degree C.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

⁽b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kral, et al. (US 5034364).

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See entire document. Kral, et al. disclose a supported chromium catalyst comprising chromium oxide (col. 3, I. 38-48) on silica containing support (col. 9, I. 25-64), an organoaluminum compound (col. 5, I. 45-col. 6, I. 11; col. 10, I. 3-6, diethyl aluminum ethoxide – col. 10, I. 47; triethyl aluminum – col. 6, I. 23-24) wherein said supported catalyst is activated between 600 and 870 degrees C (col. 3, I. 64-67). Additionally titanium tetraisopropoxide and titanium tetrabutoxide compounds are disclosed as being added to the support at any point during the catalyst synthesis but is preferred after the deposition of the first chromium species is completed (col. 7, I. 5-64). The oxyhdrocarbyl aluminum compounds can be generated in situ in the system (col. 6, I. 7-11).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 1-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of copending US Application 10/762,494. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim a supported chromium catalyst comprising chromium oxide, a silica containing support with identical pore volume and surface area but the co-catalytic materials are different. It would have been obvious to one of ordinary skill in the art to modify the reducing agent of the catalyst because alkyl silanol and organoaluminum compounds are both well known for their ability as reducing agents and the compound chosen would depend on whether a stronger or weaker reducing agent is preferred when reacting the support with the titanium isopropoxide compound.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennine M. Brown whose telephone number is (571) 272-1364. The examiner can normally be reached on M-R 9:30 AM - 7:30 PM; Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on (571) 272-1233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jmb

PRIMARY EXAMINER